

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MIDDLE BUCKS INSTITUTE
OF TECHNOLOGY
EDUCATION ASSOCIATION

v.

MIDDLE BUCKS INSTITUTE
OF TECHNOLOGY

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Case No. PERA-C-11-186-E

PROPOSED DECISION AND ORDER

On June 13, 2011, Middle Bucks Institute of Technology Education Association (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Middle Bucks Institute of Technology (MBIT, School or Respondent) violated sections 1201(a)(1) and (3) of the Public Employee Relations Act (PERA) when it curtailed the precision machine technology program and terminated the employment of its teacher, Robert Kleeman, the Association president. On June 20, 2011, the Association filed an amended charge of unfair practices.

On July 6, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 27, 2011 in Doylestown before Thomas P. Leonard, Esquire, a hearing examiner of the Board. On August 25, 2011, the Examiner continued the hearing to January 26 2012 at the request of the School and without objection from the Association.

The hearing was held on the rescheduled date at which time the parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence. On April 23, 2012, the Association filed a brief and on May 23, 2012, the School filed a brief.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. The Middle Bucks Institute of Technology is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8-9)
2. The Middle Bucks Institute of Technology Education Association is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 8-9)
3. The Association is the exclusive certified representative of a unit of professional employes of the MBIT, certified by the Board at PERA-R-214-E. There are approximately 30 professionals in the unit and approximately 25 of them are teachers. (N.T. 61)
4. The Association and MBIT are parties to a collective bargaining agreement (CBA) covering the employes, effective September 1, 2008 through June 30, 2013. (N.T. 61, 159, School Exhibit 1)
5. Robert Kleeman has been employed by the School in excess of twenty years and was the precision machine technology instructor until the program was curtailed in June, 2011 due to low enrollment and his position was terminated. (N.T. 25)
6. From 2007 to 2009, Kleeman was the grievance committee chairman. From September, 2009 to June, 2011, he was the Association president. (N.T. 25, 62)

7. Kathryn Strouse is the MBIT's Administrative Director and has held that position since 2008. She previously was the assistant principal and before that was the adult education coordinator. (N.T. 84)
8. MBIT is a technical school serving approximately eight-hundred students in tenth through twelfth grade. (N.T. 85-86)
9. MBIT's students arrive from four area public school districts and a private school. They are Centennial, Central Bucks, Council Rock, New Hope-Solebury and Archbishop Wood High School. The four districts also provide all of MBIT's funding, contributing in proportion to the number of their students enrolled in MBIT, with Central Bucks contributing 52% of MBIT's revenues. (N.T. 34, 143)
10. MBIT offers twenty-one (21) different elective programs of study. (N.T. 32-33, 88)
11. An individual program can support a maximum student enrollment of between forty-six and fifty students. (N.T. 113)
12. To deal with programs of declining enrollments the MBIT has established written policies and regulations. (N.T. 11. 24, Association Exhibits 1 and 2)
13. Policy No. 107.1, Program and Course Curtailment, states:

Policy No. 107.1, Program and Course Curtailment

The Executive Council directs the Administration to periodically determine an appropriate enrollment level for all programs and courses. In the event that the student enrollment for a particular program or course declines below that level wherein the Executive Council determines that it may be reduced to half time, the following procedure will be followed:

1. The program may be placed on a one-year probationary period and continue on full-time status.
2. The administration will meet with the instructor of the program to inform him/her of and discuss the probationary status, consistent with the requirements of the MBEA agreement.
3. If, following the one-year probationary period, student enrollment fails to increase to the predetermined level, the program or course may be reduced to half-time, or eliminated.
4. Layoffs or reductions to half-time positions will be made in accordance with Section 1125.1 of the Public School Code.
5. The Administrative Director shall develop procedures for the implementation of this policy.

(N.T. 11, 24, Association Exhibit 1)

14. MBIT's Administrative Regulation on Program Curtailment (Administrative Regulation 107.1 R) states:

PROGRAM CURTAILMENT

Consistent with Policy 107.1, the following guidelines *shall* be followed when considering recommendation to the Executive Council regarding the curtailment of an approved program:

1. Consistent with the MBEA contract, on or before June 1 of each year, a decision will be made regarding program status for the next school year based on enrollment projections available when the decision is made.
2. Probationary status will be considered when enrollment in a given program drops below 23 students.
3. If enrollment drops below 20 students, curtailment of the program to half-time status (i.e., one session) will be recommended.
4. Registered adults will be counted as one student for enrollment calculations.
5. When enrollment in a given program drops to six or less students or consistently maintains an enrollment below 12 students, consideration will be given to closing the program. The Executive Council reserves the right to modify any program and/or reorganize the educational program to be responsive to student interest, workforce needs, and educational reform.

Recognizing that enrollment will continue to change after program status has been determined (June 1) for the following year, the following will serve as guidelines for changing the status of the program:

1. Enrollment will be monitored throughout the summer and through the first two weeks of the next school year.
2. If actual enrollment increases to 23 or more, consideration may be given to offer a second session (i.e., class). Consideration may also be given to limiting or capping enrollment and maintaining the status of the program for the remainder of the year.
3. Factors such as home school schedules, student interest and need, Teacher availability and educational benefits will be considered.

(N.T. 11, 24, Association Exhibit 2, emphasis added by Examiner)

15. Under the collective bargaining agreement, MBIT must inform members of their employment status for the next year, as it relates to program assignments, on or before June 1. (N.T. 62, School Exhibit 1)
16. Because of the June 1 deadline, program considerations must be approved at MBIT's May Executive Council Meeting, which was May 9, 2011, for the year at issue in this case. (N.T. 62, 92-93, and 164-167)
17. MBIT is governed by a nine member School Board, also referred to as the Executive Council, comprised of representatives from the four sending school districts. The seats are weighted proportionally, based on the enrollments of the sending Districts. Under this weighting formula, Central Bucks has four members, Centennial has three members and Council Rock and New Hope-Solebury each have one member. (N.T. 85-85, School Exhibit 5)
18. Additionally, an Advisory Council consisting of the four superintendents from the sending school districts has a role in staffing decisions. (N.T. 86)

19. The Advisory Council meets monthly with Kathryn Strouse, MBIT's Administrative Director, to advise on educational programming and school policy. In this case, the Advisory Council met on May 3, 2011. (N.T. 86-87)
20. Decisions and advice from the Advisory Council are then presented to the Executive Council its monthly meetings for action. (N.T. 87)
21. One of the four superintendents holds the position as the superintendent of record for MBIT's Executive Council, for a three year term. In 2011, Dr. Raymond Boccuti of New Hope-Solebury School District was the superintendent of record. (N.T. 80, 87)
22. The Advisory Council also advises on program and course curtailment. (N.T. 103)
23. Strouse testified that in May, 2011, she met with all four superintendents at the Advisory Council to consider the future of the precision machine technology program. She testified that the Advisory Council relies on history of enrollment, enrollment trends in the greater area and state, and budgetary concerns. (N.T. 102-103, 112, 140-141, and 143, School Exhibit 3)
24. The Advisory Council's recommendations are then received by the Program, Policy and Personnel Committee, a subcommittee of the Executive Council, which reviews the recommendation and moves it forward for the Executive Council's consideration. (N.T. 105)
25. At its monthly public meeting, the Executive Council makes the final determination regarding a program's status. (N.T. 105-107.)
26. At the end of the 2010-2011 school year, the Executive Council unanimously voted to terminate the precision machine technology program. (N.T. 106-107)
27. On May 10, 2011, Strouse notified Kleeman by letter that on May 9, the MBIT Executive Council voted to approve "the full curtailment" of the precision machine technology program and approved Kleeman's termination as precision machine technology teacher effective the end of the 2010-2011 school year. (N.T. 45, 61, Association Exhibit 15)
28. In the 11 years preceding the cancellation of the program, the precision machine technology program was on probationary status due to low enrollment for six years and was on half-time status for an additional one year period, 2002-03. (N.T. 12, 78-79, Association Exhibit 4)
29. Under the Collective Bargaining Agreement, MBIT was obligated to inform Kleeman of his employment status for the 2011-2012 school year, no later than June 1, 2011. (N.T. 62, 92-93, 164-167)
30. The latest that the Executive Council could make a determination on the precision machine technology program's status for the 2011-2012 school year was, therefore, at its May 2011 meeting, which was May 9, 2011. (N.T. 62, 92-93, and 164-167)
31. As of May 2011, the confirmed enrollment for the precision machine technology program was twelve students, consisting of five returning students, one transfer from another MBIT program, and six new students. (N.T. 48-49, 94-102, and Association Exhibits 3 and 4)
32. On May 3, 2011, Strouse presented the Advisory Council with the enrollment numbers for the precision machine technology program. (N.T. 104)
33. Dr. Robert Laws, of Central Bucks School District, testified that the confirmed enrollment of twelve students "was below what we had expected." He also

testified that “[w]e [superintendents] knew that, as a trend, precision machining was on a downward trend statewide and locally.” (N.T. 140-141)

34. Strouse testified that Kleeman’s Association activities were not discussed at the May 3 advisory council meeting or at the Board’s program, planning and policy committee meeting. (N.T. 111)
35. Laws testified that Kleeman’s Association activities played no role in the advisory committee’s recommendation to curtail the program. (N.T. 142)
36. In March, 2009, while Kleeman was chair of the grievance subcommittee, the Association filed seven grievances with MBIT administration. The grievances were signed by Marsha Moyer. (N.T. 38, 63, 120-122, Association Exhibits 5 through 11)
37. One of the grievances resulted in a stipulated arbitration award. However, MBIT did not implement the award. As a result, on October 23, 2009, the Association, while Kleeman was president, filed an unfair practice charge against MBIT for its failure to implement the award. (N.T. 41-43, Association Exhibit 14)
38. The Association and MBIT administration had staff advisory meetings two or three times a year to resolve concerns without going through a meet and discuss session with the School Board and PSEA. (N.T. 26, 66)
39. In Kleeman’s four years as Association grievance chair and president, the staff advisory meetings were always called by the Association and never by the MBIT administration. (N.T. 26)
40. At the April, 2011, Kleeman called for a staff advisory meeting. Kleeman and Association president-elect McCombe attended. For MBIT Strouse and her entire administration attended. It was Kleeman’s last staff advisory meeting before his termination. (N.T. 27)
41. Kleeman called for the April meeting because of several issues. These included student discipline, problems the Association was having with professional behavior on the part of the administration, confidentiality issues, coordinating workload schedules among the various departments and the use of state standardized tests to evaluate teachers. Kleeman described the meeting as “very adversarial.” (N.T. 25-26, 28, 67-70)
42. Strouse testified that prior to the Executive Council’s vote to curtail the program and terminate Kleeman no one recommended to the Executive Council that the precision machine technology program be reduced to half-time status. (N.T. 131-132)
43. In past years, MBIT has allowed programs to run at half-time when their enrollments fell below 12 students. In the years 2004-05 and 2005-06, the computer programming program (CPS) ran for two years on probation with less than twenty students and then for three consecutive years (2006-07 to 2008-09) with less than twelve students before it was curtailed. (N.T. 20-21, Association Exhibit 4)
44. In 2007-08, the computer electronics program (ECT) ran full-time with nine students. In 2008-09, the ECT program ran with five students on a half-time schedule. (N.T. 21-22, Association Exhibit 4)

DISCUSSION

The Association has charged MBIT with violating PERA when it decided to curtail the precision machine technology program taught by Robert Kleeman, the Association president, and to terminate Kleeman at the end of the 2010-2011 school year. The Association claims

that the decisions were acts of retaliation for Kleeman's protected activity as Association grievance chairman and Association president.

Section 1201 (a) (3) Allegation

An employer commits an unfair practice under section 1201(a) (3) if it discriminates against an employe for having engaged in an activity protected by the PERA. **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977). In order to prevail on a charge under section 1201(a) (3), the charging party must show by substantial evidence during its case-in-chief that an employe engaged in protected activity, that the employer knew that the employe engaged in protected activity and that the employer took adverse action against the employe for having engaged in the protected activity. **Perry County**, 634 A.2d 808 (Pa. Cmwlth. 1994). If the charging party presents a prima facie case during its case-in-chief, the charge is to be sustained unless the employer shows that it would have taken the same action even if the employe had not engaged in the protected activity. *Id.*

The Complainant has proven the first two elements of the test for discrimination. Kleeman has engaged in protected activity. Representing an employe organization as a steward or an officer is a protected activity. **Commonwealth of Pennsylvania, Department of Corrections**, 36 PPER 114 (Final Order 2006). So is the filing of a grievance. **Commonwealth of Pennsylvania, Department of Public Welfare, Somerset State Hospital**, 27 PPER ¶ 27086 (Final Order 1996). Kleeman was the president of the Association from 2009 to 2011. He was chairman of the grievance committee from 2007 to 2009.

As for the employer's knowledge of Kleeman's activity, the MBIT contends that its leaders had no knowledge of Kleeman's role as grievance chairman, since his name did not appear as a signatory on the grievance forms. However, the administration did have knowledge of his role as Association president since he met with Administrative Director Strouse in his capacity as president. Additionally, while he was president, the Association had to file an unfair practice charge against MBIT for its failure to resolve a grievance that had been settled by a stipulated award. The employer had knowledge of Kleeman's protected activity.

The disputed issue in this case is the third part of the test for discrimination, employer motivation. The "motive creates the offense" under section 1201(a) (3). **PLRB v. Stairways, Inc.**, 425 A.2d 1172, 1175 (Pa. Cmwlth. 1981), quoting **PLRB v. Ficon**, 434 Pa. 383, 388, 254 A.2d 3, 5 (1969). An overt display of anti-union animus by an employer may support a finding that the employer was discriminatorily motivated. **City of Reading v. PLRB**, 568 A.2d 715 (Pa. Cmwlth. 1989). An employer does not violate section 1201(a) (3) if it takes an employment action for a nondiscriminatory reason. **Kennett Consolidated School District**, 37 PPER 89 (Final Order 2006).

Since improper motivation is rarely admitted and since the decision makers who are accused of anti-union motivation do not always reveal their inner-most private mental processes, the Board allows the fact finder to infer anti-union animus from the record as a whole. **PLRB v. Montgomery County Geriatric and Rehabilitation Center**, 13 PPER ¶ 13242 (Final Order, 1982); **St. Joseph's Hospital**, *supra*. However, an inference of anti-union animus must be based on substantial evidence consisting of "more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." **Shive**, *supra* at 313.

In **Child Development Council of Centre County (Small World Day Care Center)**, 9 PPER ¶ 9188 (Final Order, 1978), the Board stated:

There are a number of factors the Board considers in determining whether anti-union animus was a factor in the layoff of the Complainant: the entire background of the case, including any anti-union activities by the employer; statements by the discharging supervisor tending to show the supervisor's state of mind; the failure of the employer to adequately explain the discharge, or layoff, of the adversely affected employe, the effect of the discharge on unionization efforts—for example,

whether leading organizers have been eliminated; the extent to which the discharged or laid-off employe engaged in union activities; and whether the action complained of was "inherently destructive" of important employe rights."

9 PPER 9188, at 380.

The Association argues that anti-union animus can be inferred from several factors. Having reviewed the Association's arguments, the strongest factors are that MBIT failed to adequately explain why it did not apply regulations to make the program half-time; that by not allowing Kleeman's program to run half-time, it treated Kleeman in a disparate fashion from other employees; and the entire background of the case, especially that Kleeman, as the Association president, was a vigorous advocate for his fellow employees.

As for the factor that MBIT failed to adequately explain why it did not follow the regulations to reduce the program to half-time status, MBIT argues that the regulation does not have the same weight as the MBIT's policy on program curtailment. It argues that the MBIT policy allows it to reduce to half-time or eliminate programs following one year probationary period. MBIT contends the regulations are only guidelines.

However, the regulation states that the "guidelines *shall* be followed." (emphasis added by Examiner). The regulation goes on to state, "If enrollment drops below 20 students, curtailment of the program to half-time status (i.e., one session) *will* be recommended." (emphasis added by Examiner). Neither Administrative Director Strouse, nor the Superintendent of record nor the Advisory Council recommended to the Executive Council the curtailment of the program to half-time status as called for in the regulation. The regulation was written for a reason and the MBIT did not offer a convincing reason for not following it.

Furthermore, in the past MBIT has allowed other programs to run at half-time when their enrollments fell below 12 students. In the years 2004-05 and 2005-06, MBIT allowed the computer programming program (CPS) to run for two years on probation with less than twenty students and then for three consecutive years (2006-07 to 2008-09) with less than twelve students before it was curtailed. This is evidence of disparate treatment.

The entire background of the case will also be given weight as a factor to infer animus includes. The background includes a history of numerous grievances and an adversarial staff advisory meeting involving Kleeman. Kleeman became president after two years as grievance chair when the Association filed seven grievances.

The MBIT argues that Strouse did not know Kleeman held the grievance chair position. Nevertheless, the grievances show that Kleeman led an active employee organization. At the staff advisory meeting, the parties had substantial differences regarding student discipline and test scores, required by the Pennsylvania Department of Education for use in teacher evaluations. MBIT witnesses testified that the meetings were not overly contentious. However, Kleeman testified credibly that the nature of these meetings could be seen by the administration as adversarial, especially since the Association was questioning the MBIT administration's professional conduct in making derogatory references to the teachers.

The Association offered additional factors to infer animus. However, they do not rise to the same level of persuasive evidence to infer anti-union animus. The first factor was MBIT's alleged prevention of Kleeman from paying \$100 enrollment deposits to get students into his program, as he had done in prior years. However, it was unclear if the administration acted in a way to prevent Kleeman from doing this. The second factor was the use of a derogatory term by administrators about a "D wing mentality" in reference to the floor where Kleeman and other faculty taught. However, it was unclear what administrator made such remark and in which context it was made.

Given the evidence set forth above of the factors that were persuasive to infer anti-union animus motivated MBIT's decisions, the Association has made a prima facie case

that MBIT has discriminated against Kleeman for his protected activity when it fully curtailed the program and terminated him.

In its defense, MBIT argues that the Board should not find animus on this record because the facts show that that it would have taken the same action even if Kleeman had not engaged in protected activity. **Perry County, supra**. Three witnesses testified for MBIT: Kathryn Strouse, administrative director; Robert Laws, the Central Bucks Superintendent; and Stacy Pakula, MBIT's organizational advancement coordinator. The first two witnesses gave direct testimony that they observed the decision making meetings of the Advisory Council and the Executive Council where the decisions were made to curtail the program and to terminate his employment. In those meetings, Kleeman's protected activity was not discussed.

These witnesses testified that Kleeman's program was eliminated because the program had spent seven out of the ten previous years on either probationary or half time status and because of low student enrollment. As discussed above, this explanation ignores the regulations requiring that the program be placed on half-time status for the 2011-2012 school year. Nevertheless, these witnesses testified in a credible and forthright manner that Kleeman's protected activity played no part in the decision to curtail the program and to terminate him. Furthermore, the record shows no overt statements made by individuals involved in the decision to curtail the program. Given this record, it is necessary to sustain MBIT's argument that it would have made the same decisions even if Kleeman was not engaged in protected activity. **Perry County, id**. Accordingly, it must be concluded that MBIT has put forth an adequate defense so as to rebut the Association's prima facie case of discrimination. The Association has not succeeded in the third part of the **St. Joseph's Hospital** test, so the section 1201(a)(3) charge will be dismissed.

Section 1201(a)(1) Allegation

The Association also alleges that MBIT violated Section 1201(a)(1) of PERA, which prohibits an employer from "interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this Act." 43. P.S. 1101.1201(a)(1). An employer commits an independent violation of section 1201(a)(1) of PERA "where in light of the totality of the circumstances the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." **Fink v. Clarion County**, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Under this standard, the complainant does not have to show improper motive or that any employes have in fact been coerced. **Northwestern School District**, 16 PPER ¶ 16092 (Final Order, 1985); **Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI**, 35 PPER ¶ 97 (Final Order, 2004).

The Board can find an employer's actions violate section 1201(a)(1) even though the evidence does not support a section 1201(a)(3) violation. In **Northwestern School District**, 24 PPER ¶ 24104 (Proposed Decision and Order, 1993), 24 PPER ¶ 24141 (Final Order, 1993), the Board held that although the evidence was insufficient to establish anti-union motivation, the hearing examiner properly concluded that the school district engaged in unlawful interference by laying off two tutors after the district reassessed its agreement with the union to grant the tutors contractual coverage as temporary professional employees.

When all the of the circumstances of this case are considered as a whole, the Association has presented compelling evidence that the MBIT's actions would coerce a reasonable employee from exercising his rights under PERA. MBIT ignored clear regulations that required the advisory council to recommend to the Executive Council that Kleeman's program be placed on half-time status. MBIT's explanation for its decision, while not proof that it was motivated by anti-union animus, lacked respect for a process that was in place to avoid arbitrary curtailments and terminations.

The MBIT witnesses testified that when considering a program's future, the Advisory Council relies on history of enrollment, enrollment trends in the greater area and state, and budgetary concerns. These may be valid concerns, but in this case they all beg the question of why the administration did not follow the regulations for programs with low enrollment. They are general statements lacking specificity. Also Superintendent Laws'

testimony that the program was "was below what we had expected" was made without a context. There was nothing in the record to demonstrate that there had been any enrollment expectations for precision machine technology in terms of goals or targets that the parties mutually understood.

"If the complainant carries its burden of establishing a prima facie case of a Section 1201(a)(1) violation, the burden shifts to the respondent to establish a legitimate reason for the action it took and that the need for such action justified any interference with the employees' exercise of their statutory rights. **Philadelphia Community College**, 20 PPER ¶ 20194 (Proposed Decision and Order, 1989)." **Bethel Park Custodial/Maintenance Educational Personnel Association v. Bethel Park Sch. Dist.**, 27 PPER ¶ 27033 (Proposed Decision and Order, 1995). In **Ringgold Educ. Ass'n v. Ringgold Sch. Dist.**, 26 PPER ¶ 26155 (Final Order, 1995), the Board held that an employer does not violate Section 1201(a)(1) where, on balance, its legitimate reasons justifiably outweigh concerns over the interference with employee rights. **Id.** at 360.

In the present case, do MBIT's reasons for curtailing the program and terminating Kleeman outweigh the concern over the interference with employee rights? As for the budgetary reason, MBIT's witnesses have not presented a convincing case that the particular budgetary conditions of MBIT necessitated the full curtailment of just one program without following the regulations calling for a transition to a half time program. As discussed above, the MBIT witnesses presented only general statements of budgetary problems without specific detail. As for the reason that that the curtailment was justified by the lower enrollment trends in the area and the state, the Association countered with Kleeman's testimony that there was interest in the program from area employers.

The budget constraints cited by the MBIT actually make regulations for program curtailment even more important because they are a means of ensuring fair treatment of employees facing loss of employment in times of economic stress. If employers do not follow the regulations, the employees are at the mercy of management decisions that could give the impression that the regulations will not be followed if you are exercising protected activity. A reasonable employee who contemplated exercising protected activity would think twice about doing so when even an Association president is not afforded the benefit of those regulations.

MBIT also cited the students' educational needs as another reason for a full curtailment of the program. MBIT argues that in the past, it has experienced difficulty in finding alternative education for students when a program is curtailed in the middle of their secondary education. However, that problem would potentially exist any time the administration curtailed a program. Also, this explanation begs the question of why MBIT did not follow the regulations for curtailment. It is entirely conceivable that had the MBIT administration maintained the program at half-time status for a year, there may have been an increase in enrollment in the precision machine technology enrollment and there would be no stranded students. Indeed, Kleeman painted a different picture of the future, one where there was a need for a viable precision machine technology program. He testified that local business and industry had needs for precision machining employees. He also testified that the government was encouraging manufacturing training. However, the administration's decision removed the possibility of such a future for the program.

Therefore, on balance, it must be concluded that the employers' reasons for making the decisions do not outweigh the concern that MBIT interfered with employee rights. The finding that MBIT violated section 1201(a)(1) will stand.

Remedy

The violation of section 1201(a)(1) requires a remedy that will effectuate the purposes of PERA. In addition to the usual cease and desist order directing the employer from committing this unfair practice, MBIT should reinstate the precision machine technology program, reinstate Kleeman to the position he would have been in had the MBIT not violated PERA and to make him whole for all the losses he experienced because of the termination.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The Middle Bucks Institute of Technology is a public employer under section 301(1) of PERA.
2. The Middle Bucks Institute of Technology Education Association is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. MBIT has committed unfair practices under section 1201(a) (1) of PERA.
5. MBIT has not committed unfair practices under section 1201(a) (3) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that MBIT shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Take the following affirmative action:
 - (a) Reinstate the precision machine technology program, reinstate Robert Kleeman to the position he would have been in had the MBIT not terminated him and make him whole for all the losses he experienced because of the termination.
 - (b) The back pay shall be computed on the basis of each separate calendar quarter or portion thereof during he period from the date Kleeman was terminated to the point of the proper offer of reinstatement. The quarterly period shall begin the first day of January, April, July and October. Loss of pay shall be determined by deducting from a sum equal to that which the officers would normally have earned each quarter or portion thereof, their net earnings actually earned or which would have been earned with the exercise of due diligence during that period, earnings which would have been lost through sickness and any unemployment compensation received by Kleeman. Earnings in one particular quarter shall have not effect on the back pay liability for any other quarter.
 - (c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days.
 - (d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and
 - (e) Serve a copy of the attached affidavit of compliance upon the Association.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixteenth day of August, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner